

FILED BY CLERK

APR -1 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2009-0366-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
LOUIS CHRISTOPHER DALZELL,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20080074

Honorable John S. Leonardo, Judge

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney
By Jacob R. Lines

Tucson
Attorneys for Respondent

The Hopkins Law Office, P.C.
By Cedric Martin Hopkins

Tucson
Attorney for Petitioner

K E L L Y, Judge.

¶1 After a jury trial, petitioner Louis Dalzell was convicted of possession of a dangerous drug for sale and possession of drug paraphernalia. The trial court sentenced him to concurrent prison terms, the longest of which is five years. This court affirmed his

convictions and sentences on appeal. *State v. Dalzell*, No. 2 CA-CR 2008-0276 (memorandum decision filed Mar. 12, 2009).

¶2 In a petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P., Dalzell unsuccessfully sought relief from his convictions and sentences based on the United States Supreme Court’s decision in *Arizona v. Gant*, ___ U.S. ___, 129 S. Ct. 1710 (2009), which he characterized as a significant change in the law under Rule 32.1(g). In this petition for review, Dalzell contends the trial court erred when it found *Gant* inapplicable to his case. We will not disturb the court’s order absent a clear abuse of its discretion. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007).

¶3 The facts presented at trial are set forth in this court’s memorandum decision on appeal. *See Dalzell*, No. 2 CA-CR 2008-0276, ¶¶ 2-5. Briefly, officers stopped the car Dalzell was driving because computerized records showed the registered owner had a suspended driver’s license and contained the notation “all registrations suspended,” which the officer understood to mean that the registrations of any vehicles under that owner’s name were suspended. After a further records check revealed Dalzell had a nonextraditable Florida warrant for his arrest and a suspended Florida driver’s license, officers arrested him and placed him in the back of a patrol car. During a subsequent inventory search of the vehicle, officers found methamphetamine and drug paraphernalia.

¶4 In denying post-conviction relief, the trial court found the Supreme Court’s decision in *Arizona v. Gant* was not a significant change in the law applicable to this case

because, a year before Dalzell committed these offenses, our supreme court had already limited vehicle searches incident to arrest in *State v. Gant*, 216 Ariz. 1, 162 P.3d 640 (2007). Because *Arizona v. Gant* affirmed our supreme court’s decision and therefore did not change the law in this state, it does not constitute a “significant change in the law” applicable to these offenses. Ariz. R. Crim. P. 32.1(g).

¶5 Dalzell also asserts the trial court erred in finding the search was an inventory search, to which *Gant* does not apply, because the state did not present evidence of inventory logs or the police department’s inventory-search policy.¹ Because we conclude Dalzell was not entitled to relief under Rule 32.1(g), we need not reach the issue of *Gant*’s applicability to an inventory search.

¶6 We cannot say the court abused its discretion in denying Dalzell’s petition for post-conviction relief. Therefore, although we grant the petition for review, we deny relief.

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge

CONCURRING:

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Presiding Judge

¹At trial, the arresting officer testified officers had conducted an inventory search of the vehicle Dalzell was driving after they placed him in a police vehicle. In our memorandum decision, we adopted that characterization, and the trial court apparently relied on it in its order denying relief.